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December 6, 2004

Arizona Corporation Commission
DOCKETED

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VIA U.S. MAIL AND E-MAIL

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Mr. Kenneth C. Sundlof, Jr., Esq.
Jennings Strouss & Salmon PLC
201 East Washington, 11th Floor
Phoenix, AZ 85004

Dear Mr. Sundlof:

In response to Chairman Woodall's request to "confer and if possible reach agreement on the issue of the acceptability or unacceptability of public comment by individuals represented by counsel," this letter states our position on this issue.

There are several provisions in the Arizona Revised Statutes which pertain to whether a represented party may give public testimony. The relevant provisions are listed below:

- ARS 40-360.04(C) indicates that the committee "shall receive **under oath** and before a court reporter the material, nonrepetitive evidence and comments of the **parties** to the proceedings..." (Emphasis added).
- ARS 40-360.05(B) indicates that "a person making a limited appearance [by filing a written statement] **shall not be a party** or have the right to present oral testimony or cross-examine witnesses." (Emphasis added).
- AAC R18-3-208(D) indicates that the presiding officer "shall receive **under oath** and before a court reporter the material, nonrepetitive evidence, and comments of the **parties** to the proceedings..." (Emphasis added).

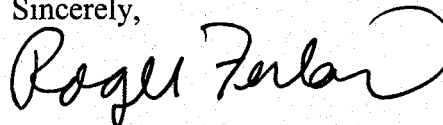
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- AAC R18-3-208(F) indicates that “[i]ndividual parties may appear at the hearing on their own behalf. **All other persons who are parties shall appear only by a licensed attorney.**” (Emphasis added).

Taken together, these provisions indicate that a party represented by counsel must only give testimony or comments under oath. Where a party is represented by counsel and is a party to the proceedings, such a party cannot be allowed to present “testimony” or comments during the public comment period, as those statements are not given under oath. The public statements are also not given through a licensed attorney. A party represented by counsel does not get two bites at the apple in providing evidence to the committee. Furthermore, there is a question of fairness when a represented party makes a public statement to the committee without an opportunity for the other parties to cross-examine that represented party.

Based on the foregoing analysis, we find that public comment by parties represented by counsel is inappropriate and should not be allowed.

Sincerely,



Roger Ferland

cc (via U.S. Mail and E-Mail):

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